7

SUPREME COURT OF THE UNITED STATES.

No. 133.

SPALDING & ROGERS, PL'FFS IN ER.,

vs.

THE CORPORATION OF BATON ROUGE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	1
Supplemental petition	3	2
Exhibit A.—Town ordinance	4	3
Exhibit B.—Writ of attachment	6	4
" B.—Notice of seizure	7	4
" B.—Citation	7	5
Exception and agreement	8	5
Submission of cause	9	6
Final judgment	9	6
Opinion of the Court	10	6
Petition for writ error	16	10
Order granting do	16	10
Clerk's certificate	17	10
Writ of error	18	11
Citation and service	19	12

CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern District of Louis'a.

A transcript of the record and proceedings in the case of Spalding and Rogers vs. Corporation of Baton Rouge, No. 2191.

Be it remembered, that heretofore, to wit, on the 14th day of December, 1852, Spalding and Rogers, by their attorney, Thomas Hunton, came into the clerk's office of said Court, and caused to be filed therein a petition which is in the words and figures following, to wit:

To the Hon. the Judges of the Circuit Court of the United States for the fifth circuit Eastern District of Louisiana:

The petition of Gilbert R. Spalding, who is a citizen of the State of New York, and Charles J. Rogers, who is a citizen of the State of Pennsylvania, respectfully shews:

That your petitioners are partners under the firm and style of Spalding & Rogers; that they are owners of a barge or vessel called the Floating Palace; that they have caused said barge to be enrolled and licensed, under the acts of Congress of the United States, for a term not yet expired, as a coasting vessel, as will fully appear from a copy of said enrollment and license which will be annexed hereto as part of this petition.

Your petitioners further show that, whilst the said barge was being employed by your petitioners in their lawful trade and business on the river Mississippi, and within the jurisdiction of this Court, and whilst they were they were about to depart with their said barge from a point of said river near the city of Baton Rouge, upon a voyage up the said river, the said city and corporation of Baton Rouge, through its lawful agents and officers, caused the said barge, the Floating Palace, to be seized and detained, and caused also to be seized and detained, for several days, a large number of chairs which were a [part] of the apparel and furniture of said barge, necessary to your petitioners in the prosecution of their lawful trade and commerce with said vessel along the said river.

Your petitioners further show that, previous to said seizure, they had incurred great expense in preparing to make a voyage up the Mississippi to give equestrian exhibitions on board of their said barge; that they had advertised to give divers exhibitions at the towns and villages along the river; that they had contracted with a pilot to navigate their barge up Red river, and were compelled under their contrat to pay said pilot $100, although the voyage was not made in consequence of the said illegal act of the corporation of Baton Rouge; that they were prevented from fulfilling their engagements in

consequence of said illegal acts of the corporation *of* aforesaid, and were hindered and obstructed in the free use and enjoyment of their vessel, and in the prosecution of their lawful business, trade, and commerce, under their license aforesaid, by the seizure and detention aforesaid; and your petitioners aver, that by the said illegal seizure and detention, they sustained losses and damage to the amount of $2,500.

Wherefore, they pray that the city or corporation of Baton Rouge be cited to appear and answer this petition, and that after due proceedings had petitioners have judgment for said sum of $2,500 and costs, and they pray for such relief in the premises as they are entitled to.

THO. HUNTON,
Att'y.

Supplemental petition—Filed March 16th, A. D. 1853.

SPALDING & ROGERS
vs.
THE CORPORATION OF THE TOWN OF BATON ROUGE.

To the Hon. the Circuit Court of the United States for the Eastern District of Louisiana:

The supplemental and amended petition of plaintiffs respectfully shows, that the illegal acts of defendants complained of in the original petition herein filed were as follows, to wit:

That the said defendant, proceeding under certain ordinances of the said town of Baton Rouge, herewith filed, marked A and made part of this petition, caused to be seized the barge called the "Floating Palace," and a lot of chairs which were a part of the necessary furniture of and which were on board of said Floating Palace, under a writ of attachment and other process of law which issued illegally and without the authority of law, and did, by virtue of and under the said proceedings at law herewith exhibited, marked B and made part of this petition, coerce from the plaintiffs the sum of $50, as a penalty for exhibiting a circus in and on board of said barge while the said barge was lying and being in the river Mississippi, opposite the town of Baton Rouge, and near the wharf of said town—the said vessel called the Floating Palace then and there being regularly enrolled and licensed as a coasting vessel under the laws of the United States, and being engaged in commerce between the several States of the United States, to wit, in navigating the said river Mississippi, and along the borders of and between the several States of the United States, and giving, for pay, equestrian exhibitions in and on board of their said barge while thus navigating, and other wrongs and injuries to the said plaintiffs then and there did, as set

forth in the original petition herein filed, to the damage of plaintiffs of $2,500; and plaintiffs pray for general relief in the premises.

THOMAS HUNTON,
Attorney.

Exhibit A, annexed to and made part of and filed with the foregoing supplemental petition, 16th March, 1853.

STATE OF LOUISIANA, PARISH OF EAST BATON ROUGE,
Corporation of the town of Baton Rogue:

Exhibitions.

[Rates of tax on exhibitions.]

Be it ordained &c., That each and every proprietor of a circus shall pay into the treasury of the corporation the following tax before being allowed to open their establishment for public exhibition.

First. For each circus arriving by steamboat or other water craft, for the first exhibition, forty dollars, and for every subsequent exhibition twenty dollars, with two dollars cost of license.

Second. For every circus arriving by land, for the first exhibition, twenty dollars, and ten dollars for each subsequent exhibition, with two dollars cost of license.

Be it ordained &c., That each and every proprietor of an exhibition or show (other than a circus) shall pay into the treasury of the corporation the sum of five dollars for each exhibition and two dollars cost of license.

Be it ordained &c., That any person violating the foregoing ordinances relative to circuses and other exhibitions, shall be liable to pay a fine of fifty dollars, recoverable before the Mayor.

(April 6, 1852.)

I hereby certify that the above is a true copy of the ordinances relative to exhibitions now in force in the corporation of Baton Rouge.

In testimony whereof, I have hereunto affixed my signature with [SEAL.] the seal of office this 25th day of January, 1853.

JOHN R. DUFROCQ, *Mayor.*

I hereby certify that the above-printed resolutions as embraced in the certificate of the Mayor and attached to said certificate are true and correct copies of ordinances and laws of the board of selectmen of the town of Baton Rouge, passed on the sixteenth day of April, A. D. 1852, and in force from that time to the present.

Given under my hand, the corporate seal being in the custody of the Mayor, this 25th day of January, 1852.

O. BARBER, *Clerk.*

Exhibit B, annexed to, made part of, and filed with the foregoing supplemental petition, on the 16th day of March, 1853.

STATE OF LOUISIANA,
Parish of Baton Rouge, Corporation of Baton Rouge.

To the town constable, A. Le Sage, or any other constable Parish and State aforesaid.

Whereas, Spalding & Rogers have neglected to take a license for the performance of the circus on board of the Floating Palace attached to the steamboat North River, and to the levee at Baton Rouge this evening, December 1st, 1852, according to the laws of the corporation in such case made and provided:

You are hereby ordered to attach, seize, and take in your possession the said Floating Palace, or so much so of the movable property, rights, and interests of said Spalding & Rogers as will satisfy the sum of forty-two dollars cost of license and the costs of this suit, and keep them until further order of this Court. Hereof fail not, and make return within the shortest delay of your proceedings therein before me.

Given under my hand this 1st December, 1852.

JOHN R. DUFROCQ,
Mayor and J. P.

Endorsed: Received the within writ this 1st day of December, 1852, and on the 2d day of December, 1852, served the same by seizing the following property, to wit: one hundred and fifty cane-bottomed chairs, in the presence of Theophilus Aris and Edward Cousenartt; made the following exact and minute inventory of said property attached.

Inventory.—One hundred and fifty cane-bottom chairs.

A. LE SAGE, *P. C.*

THEOPHILUS ARIS,
EDWARD A. COUSENARTT.

Exhibit "B," annexed to and made part of and filed with the foregoing supplemental petition, 16th March, 1853.

STATE OF LOUISIANA,
Parish of East Baton Rouge:

BOARD OF SELECTMEN of the Corporation of East Baton Rouge
vs.
MESSRS. SPAULDING, ROGERS & Co.

In Mayor's Court, before John R. Dufrocq, T. M.

To Spaulding, Rogers & Co.

You are hereby notified, that by virtue of a writ of attachment

issued in the above-entitled suit, by John R. Dufrocq, town mayor, and to me directed, I have attached all your right, title, interest, and claim in and to the following property, to wit, one hundred and fifty cane-bottom chairs. Which property I will keep in my possession until the further order of the Court.

Given under my hand this 2nd day of December, 1852.

A. LE SAGE,
P. Constable.

Exhibit B, annexed to, made part of, and filed with the foregoing supp'l petition, 16th March, 1853.

STATE OF LOUISIANA,
Parish of East Baton Rouge, Corporation of Baton Rouge:

To Messrs. Spaulding, Rogers & Co., proprietors of the Floating Palace.

You are hereby summoned to appear forthwith before me, at my office in the town of Baton Rouge, to show cause why you should not be fined in the sum of fifty dollars for neglecting or refusing to pay a license for exhibiting, on the first day of December, 1852, a circus on board the Floating Palace contrary to an ordinance of the corporation. Given under my hand and seal of office, this second day of December, 1852.

JOHN R. DUFROCQ, [SEAL.]
Mayor.

Exceptions and consent.—Filed 23d March, 1853.

SPALDING & ROGERS
vs.
THE CORPORATION OF
BATON ROUGE.

The defendants now come and except to the plaintiffs' petition and supplemental on the ground that the facts therein stated do not constitute any legal cause of action—the authority under which the defendants acted, as shown on the face of the plaintiffs' petition, being a legal justification for the acts complained of. Wherefore, respondents pray the judgment of the Court on this their exception, and that the plaintiffs' suit be dismissed as their costs.

And should the foregoing exception be overruled, respondents deny generally the allegations in plaintiffs' petition contained, and pray that the demand be rejected and for trial by jury.

OGDEN & CHILTON,
Att's for Def'ts.

It is hereby agreed that the above exception shall be tried by the Court before going into the trial of the cause before a jury; and

if said exception is overruled by the Court, it shall be without prejudice to the rights of defendants under their plea of general denial.

THO. HUNTON,
Plff's Att'y.

And afterwards, to wit, on the 16th day of May, A. D. 1853, the following entry was made on the minutes:

SPALDING & ROGERS
vs.
CORPORATION OF BATON ROUGE. } 2191.

The pleadings in this cause were read, and the exceptions submitted on briefs to be filed.

And afterwards, to wit, on the 25th day of May, 1853, the Court rendered a final judgment in this case, which was entered of record in the minutes, and on the 31st day of May, 1853, the said final judgment was recorded in the judgment-docket, and signed in the words and figures following, to wit:

NEW ORLEANS,
Wednesday, 25th May, A. D. 1853.

Court met pursuant to adjournment.

Present, Hon. J. A. Campbell, presiding judge.
Present, " Theo. H. McCaleb, district judge.

SPALDING & ROGERS
vs.
CORPORATION OF BATON ROUGE. } 2191.

This cause came on to be heard at this term, and was argued by counsel: on consideration whereof, it is ordered, adjudged, and decreed that there be judgment in favor of the defendants, and that the plaintiffs' petition be dismissed with costs.

Judgment rendered 25 May, 1853.
" signed 31st May, A. D. 1853.

J. A. CAMPBELL,
Associate Judge.

Opinion of the Court, delivered by Hon. Theo. H. McCaleb, 25th May, 1853.

U. S. CIRCUIT COURT.

SPALDING & ROGERS
vs.
THE CORPORATION OF BATON ROUGE.

The plaintiffs allege that they are owners of a barge or vessel

called the "Floating Palace," which they caused to be enrolled and licensed under the acts of Congress of the United States, for a term not yet expired, as a coasting vessel, as will fully appear from a copy of the enrollment and license annexed to the petition. They further allege, that whilst the said barge was employed by them in their lawful trade and business on the Mississippi river, and within the jurisdiction of this Court, and whilst they were about to depart with her from a point of the river near the town of Baton Rouge, upon a voyage up the said river, the corporation of Baton Rouge, through its lawful agents and officers, caused the said barge, together with a large portion of her apparel and furniture, to be seized and detained. These proceedings on the part of the authorities of the town took place, it seems, in consequence of the owners of the barge refusing to pay the sum of $40 tax and $2 the price of a license, which are required by an ordinance of the corporation to be paid by every proprietor of a circus arriving by steamboat or other watercraft for the first exhibition. The ordinance further declares, "that any person violating the foregoing provisions relative to circus and other exhibitions shall be liable to pay a fine of *fifty dollars*, recoverable before the mayor of the town." The seizure and detention complained of in this case took place in accordance with an order of the mayor, which was granted for the purpose of enforcing the payment of this fine. The plaintiffs contend that these proceedings were illegal and oppressive, and resorted to by the authorities of the town under and by virtue of an ordinance passed in violation of that provision of the "Federal Constitution" which declares that "Congress shall have power to regulate commerce among the several States."

They furthermore contend, that the barge or "Floating Palace" was not within the jurisdiction of the corporation at the time the tax or fine was exacted. They therefore claim damages to the amount of $2,500. The defendants plead the general issue; but first maintain, in the form of an exception, the constitutionality of the ordinance under which the payment of the fine was enforced.

The barge in question was constructed for the express purpose of giving *circus exhibitions*, and was provided with a company, an amphitheatre, and the properties usually required for such an employment.

It is undoubtedly true, as the counsel of the plaintiffs contend, that the word "commerce" is uniformly understood to comprehend navigation; that it was so understood, and must have been so understood when the constitution was framed; that the power over commerce, including navigation, was one of the primary objects for which the people of America adopted their government, and must have been contemplated in forming it. The convention must have used the word in that sense, because all have understood it in that sense; and the attempt now to restrict it would be regarded as coming too late. It cannot be restricted to mere traffic—it is some-

thing more: it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse. (9 Wheaton, 189, 190.)

But what is the fact in reference to this barge? It cannot, with any propriety, be contended that she was engaged in commerce, or that she *has*, in any sense of the term, a commercial vessel; and while she was doubtless navigating the waters of the Mississippi, and had a right to navigate them, yet her simply passing from town to town for the purpose for which she was specifically constructed, and in the execution of which she was actually engaged, could not reasonably be regarded as a navigation for commercial purposes, or as a navigation which would necessarily be regarded as an incident of commerce, and included within that term as it is used in the Federal Constitution. As the term was there used, it was doubtless intended to comprehend navigation as a means by which commerce is carried on, and not simply navigation as totally disconnected with commerce.

The arguments of counsel, submitted in their briefs to the Court, admit the fact that this "Floating Palace" was constructed for the purpose of giving *circus exhibitions*, and that it was actually employed for that purpose, and that purpose only, at the time the proceedings before the Mayor's Court were instituted to enforce a compliance with the provisions of the ordinance of the corporation. We are unable to discover what necessary connection the jokes and jests of the ring, the races of horses around a circle, or those gymnastic accomplishments usually exhibited in the amphitheatre of a circus, can have in the commerce and navigation; nor can we discover how the license which is set up by the plaintiffs can avail them as a protection or ground of exemption to liability to pay the tax or fine of which they complain.

The word *license* means permission or authority; and a license to do a particular thing is a permission or authority to do that thing; and if granted by a person having power to grant, transfers to the grantor the right to do whatever *it purports to authorize*. It transfers to him all the right which the grantor can transfer, to do what is *within the terms of the license*. We concur in the position assumed by the counsel of the defendants, that the policy of the act of Congress authorizing the granting of licenses like the one in question, was to protect the revenue of the government. The vessel holding such a license is permitted to navigate the waters of the United States upon giving security that the revenue laws shall not be violated. The language of the license in this case grants permission to the Floating Palace to carry on the *coasting trade*. But what possible application can this term, used in a commercial sense, have to those *feats of agility* which are commonly exhibited in a circus? This vessel also had a right to land at the town of Baton Rouge, and, if necessary, to land *freight* and *passengers*. But if

her proprietor choose to remain within the incorporated limits of the town and carry on an occupation which, though lawful, is yet a subject of taxation, we can find for them no exemption in any provision of the constitution of the United States.

The well-established principles of constitutional law applicable to this subject are: That a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, where that jurisdiction is not surrendered or restrained by the constitution of the United States. That by virtue of this, it is not only the right but the bounden and solemn duty of a State to advance the safety, happiness, and prosperity of its people, and to provide for its general welfare by any and every act of legislation which it may deem to be conducive to these ends, where the power over the particular subject or the manner of its exercise is not surrendered or restrained in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called *internal police*, are not thus surrendered or restrained, and that, consequently, in relation to these, the authority of a State is complete, unqualified, and exclusive. (11 Wheaton, 139.)

We regard the tax or fine imposed by the selectmen of the town of Baton Rouge upon public exhibitions as a mere police regulation, which is necessary to the order and welfare of cities and towns, and neither surrendered nor restrained by any provision of the constitution of the United States. The authority in the State in such cases is complete, and it has in this instance been specially delegated to the corporation of Baton Rouge, by the 4th sec. of the act of the Legislature of Louisiana, approved on the 18 day of February 1850. That section declares, "That the selectman shall also have power to regulate the landing within the incorporated limits of said town, and to designate how it shall be occupied, and to impose special taxes, and (among other things) upon *exhibitions*, flat-boats, and other water crafts within the aforesaid limits."

But the plaintiffs contend that their Floating Palace, although moored at the landing of the town, was not within the incorporated limits, and therefore beyond the jurisdiction of the corporation. In support of this position, they rely upon the first section of the act of the Legislature just referred to, which designates the lower limits of the corporation as "commencing at the Mississippi river." In the judgment rendered by the mayor against this vessel for the amount of the fine, which has given rise to this controversy, it is expressly stated that the "Floating Palace, being fastened to the shore and connected therewith by a bridge, formed as much a part of the shore as if the performances were given on the shore itself." This judgment of the mayor was brought by appeal under the revisionary power of the Supreme Court of this State, and we may reasonably conclude that the very point in question was considered The judgment of the Mayor was affirmed; and, if we entertained any

doubt upon the subject, we have no hesitation in saying that the decision of the supreme tribunal of a State upon a question of local law, relating to the limits of the local divisions of the State, will be regarded by this Court as conclusive.

We are therefore of opinion that this action cannot be maintained, and that the petition must be dismissed with costs.

Petition for writ of error.—Filed 23d March, 1854.

SPALDING, ROGERS, & CO.
vs.
THE CORPORATION OF CITY OF BATON ROUGE.

To the Hon. the Circuit Court of the United States for the fifth circuit, Eastern District of Louisiana.

The petition of plaintiffs respectfully shows that they are informed and believe there is error in the judgment of this Hon. Court in the above entitled suit, whereby they are aggrieved. Wherefore they pray that a writ of error be allowed them to the Supreme Court of the United States.

THOS. HUNTON,
For Plff's.

And afterwards, to wit, on the 23d day of March, 1854, the following entry was made on the minutes:

SPAULDING & ROGERS
vs.
CORPORATION OF BATON ROUGE. } 2191.

On motion of Thomas Hunton, esq., att'y for the plaintiffs, and on his presenting and filing a petition representing that they feel aggrieved by the judgment herein rendered against them, and are desirous that the same should be reviewed by the Supreme Court of the United States by writ of error, it is ordered that a writ of error be issued as prayed for, on plaintiffs giving bond, conditioned according to law, in the penal sum of three hundred dollars, with good and solvent security, returnable to the next term of the Supreme Court of the United States.

UNITED STATES OF AMERICA,
Circuit Court of the United States.

Fifth circuit and eastern district of Louisiana.

Clerk's Office.

I, John W. Gurley, clerk of the Circuit Court of the United

States for the eastern district of Louisiana, do hereby certify that the foregoing 16 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Spalding & Rogers vs. the corporation of Baton Rouge, No. 2191 of the docket, so far as the same now remain of record or on file in said Court.

Witness my hand and the seal of said Court, at the city of New [SEAL.] Orleans, this 2nd day of November, A. D. 1854.

J. W. GURLEY,
Clerk.

UNITED STATES OF AMERICA, ss:

The President of the United States, to the honorable the Judges of the Circuit Court of the United States in and for the fifth circuit, and holding sessions for the Eastern District of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or one of you, between Spalding & Rogers and the corporation of Baton Rouge, a manifest error hath happened, to the great damage of the said Spalding & Rogers, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this tenth day of May, in the year of our Lord one thousand eight hundred and fifty-four.

J. W. GURLEY,
Clerk of the United States Circuit Court
for Eastern District of Louisiana.